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UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

In re:	:	
RICHARD J. HINDIN,	:	**Case No. 09-19741-BFK**
	:	**(Chapter 11)**
Debtor.	:	

DEBTOR'S MOTION
TO SELL REAL PROPERTY OF THE ESTATE

Richard J. Hindin, the reorganized debtor (the "Debtor") hereby moves, pursuant to Article 5.1 of the Debtor's Third Amended Plan of Reorganization (the "Plan") and 11 U.S.C. §§ 105 (a), 1123, 1141, 1142 and 1146 for an Order authorizing his sale of real property located at 407 Chain Bridge Road, McLean, VA, 22102 ("407 Chain Bridge") and 405 Chain Bridge Road, McLean, VA, 22102 ("405 Chain Bridge") (collectively, the "Properties") $3,600,000.00 and $1,500,000.00, respectively. In support of this Motion, the Debtor states as follows:

Background

1. The Debtor filed his bankruptcy case on November 30, 2009 (the "Petition Date"). On September 18, 2011 the Court entered an order confirming the Debtor's Third Amended Plan of Reorganization (the "Plan"). Article 5 of the Plan provides for the sale of certain real property of the estate, free and clear of any liens thereon, including the Properties. Under the Plan, any sale of the Properties is required to be approved by the Court after notice to creditors. Both Properties have been listed for sale since before the case was filed, and have been continuously listed since the Petition Date.

2. Since the Petition Date, the Debtor has lacked the funds to service the debt on 407 Chain Bridge Road. 405 Chain Bridge Road, by contrast, is encumbered by a reverse mortgage which does not require out-of-pocket debt service. In 2010, the holder of the first deed of trust encumbering 407 Chain Bridge Road, The Bank of New York ("BNY") filed a motion for relief from the automatic stay seeking to enforce its rights under its deed of trust. BNY's motion was ultimately resolved by a consent order (the "Consent Order") entered on September 20, 2010 (Docket No. 87) which required the Debtor to sell 407 Chain Bridge by March 20, 2012, failing which BNY would be entitled to relief from the automatic stay to enforce its rights under its deed of trust. The Debtor received no offers at all for 407 Chain Bridge Road by the Court-imposed deadline, and on April 5, 2012 BNY filed an affidavit of default (Docket No. 196). The Court subsequently entered an order granting BNY relief from the stay on April 11, 2012 (Docket No. 197) Since that time, the Debtor has continued to market 407 Chain Bridge Road notwithstanding BNY obtaining relief from the stay and BNY has not commenced a foreclosure proceeding.

3. Article 5 of the Plan originally placed a deadline (including an extension

contemplated in the Plan) of August 3, 2012 for obtaining a sale contract on 405 Chain Bridge, and certain other real properties of the estate, failing which the real property would be sold at an auction. No offers for 405 Chain Bridge were received before the deadline, and on August 3, 2012 the Debtor filed a motion to modify the Plan to extend the deadline for obtaining purchase offers on 405 Chain Bridge and the other real properties of the estate, for one year (which would have been May 2, 2013). By an order entered on September 28, 2012 (Docket No. 239), the Court partially granted this motion and modified the Plan to provide for a sale deadline of March 27, 2013, rather than the longer deadline requested by the Debtor.

4. 407 Chain Bridge was scheduled by the Debtor as having an estimated value of $7,950,000. 405 Chain Bridge was scheduled by the Debtor as having an estimated value of $1,500,000. 407 Chain Bridge was initially listed for sale at $7,950,000 on the Petition Date. The list price was reduced to $6,950,000; 5,950,000 and 4,950,000 on September 20, 2011, December 23, 2011 and August 16, 2011, respectively. Prior to the offer that is the subject of this Motion, no offers at all for 407 Chain Bridge have ever been received. The list price for 405 Chain Bridge has remained at $1,500,000 since the Petition Date.

5. On November 9, 2012 the Debtor received offers to purchase 407 Chain Bridge and 405 Chain Bridge for $3,600,000 and $1,500,000, respectively, from Potomac CBR, LLC ("Potomac CBR"). Copies of the sale contracts (the "Contracts") for the two Properties, which have been executed subject to this Court's approval, are attached as Exhibits 1 and 2, respectively. Potomac CBR's principals contemplate tearing down the residences located on the two Properties and constructing a new residence. The Contracts therefore are subject to a 30-day feasibility study once Court approval is received. Since Potomac CBR represents the only offer ever received by the Debtor on either of the Properties, the Debtor has also agreed to Potomac

CBR's request for a modest break-up fee and overbid protection of $50,000.00 and $100,000.00, respectively, both of which are described in the addenda to the Contracts.

6. The Debtor has concluded that it is in his and the creditors' best interests to accept Potomac CBR's offer, for a number of reasons: i) Potomac CBR's offer is the only offer the Debtor has received; ii) Taxes and the balance of the mortgage encumbering 405 Chain Bridge total approximately $440,000.00. The proposed sale would yield a substantial dividend to the estate; iii) 407 Chain Bridge is encumbered by liens with a balance exceeding $8 million. There is no realistic hope of obtaining an offer that would pay any dividend to the estate and the first trust holder has already obtained relief from the automatic stay; and, (iv) the Debtor faces a deadline to sell the Properties of March 27, 2013 or the Properties will have to be auctioned. An auction would expose the estate to a substantial risk of a lower sale price with no likelihood of a purchase price in excess of Potomac CBR's offer.

7. By this Motion, the Debtor seeks Court authorization to sell the Properties to Potomac CBR on the terms described in the Contracts. Out of the proceeds of sale, the Debtor will pay a real estate commission of 6%. Pursuant to the Plan no transfer taxes are to be paid. Net proceeds will be deposited in the Debtor's DIP account and distributed according to the terms of the Plan.

Relief Requested

8. Pursuant to the Plan, the Debtor is authorized to sell the Properties free and clear of any liens thereon. Plan, at ¶ 5.1 (a), pp. 14-15. A debtor may sell property of its estate outside of the ordinary course of business under a chapter 11 plan free and clear of liens and interests. *See, generally*, 11 U.S.C. §§ 1123 (a)(5), 1141 (c) and 142. In addition, a bankruptcy court may approve of the debtor's decision to sell assets outside of the ordinary course of

business if the court finds that the debtor's decision to sell is based on sound business judgment. *See, e.g., In re Martin*, 91 F.3d 389 (3rd Cir. 1996). *See also, Comm. Of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr.S.D.N.Y. 1986) ("Where the Debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the Debtor's conduct. *Accord, In re Naron & Wagner, Chtd.*, 88 B.R. 85, 87 (Bankr.D.Md. 1988).

9. Here, the Debtor has determined in the exercise of its business judgment that the sale of the Properties for the price offered by Potomac CBR represents the best likely economic result to be garnered from the Properties, and therefore respectfully asks the Court to approve this Motion.

10. The Debtor also requests a determination by the Court that Potomac CBR is a good faith purchaser within the meaning of 11 U.S.C. § 363 (m) and waiving any stay imposed by Fed. R. Bankr. P. 6004 (h).

11. Since the sale of the Properties is pursuant to the Plan, rather than under section 363, the Debtor believes that the proper response deadlines for the proposed sale are those provided in the Court's Local Rules for regular motions, rather than the 21 day notice period provided in Fed. R. Bankr. P. 2002 (a)(2). The Debtor has noticed the hearing on the Motion for the Court's regular motions day docket on December 4, 2012. Out of an abundance of caution, the Debtor is also filing a companion motion to reduce, if necessary, any longer notice period required by Fed. R. Bankr. P. 2002 to the notice period provided herein. Given the looming March, 2013 deadline and the 30-day feasibility study provided for in the Contracts, the Debtor strongly believes it is in the estate's interest to hold the hearing on this Motion on December 4,

2012. This Motion contemplates that the sale of the Properties be subject to any higher and better offers presented at the hearing on the Motion, but that any such offers conform to the requirements of the break-up fee and overbid protection in the Contracts.

12. A proposed order in the form requested by Potomac CBR is attached hereto.

WHEREFORE, the Debtor prays that the Court enter an Order:

a. granting the Debtor authority to sell the Properties on the terms described herein to Potomac CBR;

b. finding that Potomac CBR is a good-faith purchaser within the meaning of 11 U.S.C. §§ 105 and 363 (m);

c. waiving the stay provided in Fed. R. Bankr. P. 6004 (h); and

d. granting the Debtor such other and further relief to which he is entitled.

NOTICE OF MOTION

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one). If you do not want the court to grant the relief sought in the Motion, or if you want the court to consider your views, then on or before **November 30, 2012**, you or your attorney must:

1. File with the Court, at the address shown below, a written response pursuant to Local Bankruptcy Rule 9013 and 1007-1 (D). If you mail your response to the court for filing, you must mail it early enough so that the court will receive it on or before the date stated above. Your mailing should be directed to:

Clerk of the Court
U.S. Bankruptcy Court
200 S. Washington Street
Alexandria, VA 22314

2. You must also mail a copy to:

Stephen Nichols, Esq.
Cooter, Mangold, Deckelbaum & Karas, LLP
5301 Wisconsin Avenue, NW
Suite 500
Washington, DC 20015

Office of the US Trustee
115 South Union Street
Alexandria, VA 22314

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400 Atlantic Avenue
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3. You must also attend the hearing to consider the relief sought in the Motion in addition to filing a written objection. If you fail to timely file a written response and to attend the hearing even if a response is timely filed, the Court may consider any objection you may have waived and enter an Order granting the relief requested. **The Debtor has filed a separate motion, also served on you herewith requesting that hearing be scheduled for December 4, 2012 at 11:00 a.m. at the United States Bankruptcy Court, Courtroom I, 200 S. Washington Street, Alexandria, VA, 22314.**

/s/ Stephen Nichols
Stephen Nichols

Date: November 13, 2012.

Respectfully submitted,
RICHARD J. HINDIN
By Counsel

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of November, 2012 a copy of the foregoing DEBTOR'S MOTION TO SELL REAL PROPERTY OF THE ESTATE was mailed, via first class mail, postage prepaid, to the following:

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and via first class mail (except as otherwise noted) to all creditors and other parties in interest, as listed on the attached Service List.

/s/ Stephen Nichols
Stephen Nichols

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